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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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March 24, 2005

Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 5650

Ladies and Gentlemen:

The Arizona Board of Regents, on behalf of the University of Arizona, hereby responds to the above referenced complaint filed by Bennett S. Kalafut on March 9, 2005 (the "Complaint"). The University of Arizona ("University") is a public land-grant state university, providing undergraduate, graduate and professional education integrated with world-class basic and applied scientific research.

The University is under the jurisdiction and control of the Arizona Board of Regents (the "Board"). The Board is a governmental body corporate with perpetual succession as an instrumentality of the State of Arizona. The authority and duties of the Board are derived from the Constitution, statutes and laws of the State of Arizona. See ARS § 15-1625.

The Internal Revenue Service determined that the University is an instrumentality of the State of Arizona and an integral part of a governmental agency. See March 31, 1989 Letter issued by the IRS, attached. As provided under the IRS Letter, the University's income is excluded from federal income tax under Section 115 of the Internal Revenue Code (the "Code") and University donors may deduct charitable contributions for federal income tax purposes under Section 170(c)(1) of the Code.

The Associated Students of the University of Arizona ("ASUA"), against whom the allegations of the Complaint are directed, is the associated student body at the University. ASUA is a department of the University; it is not a separate legal or corporate entity.¹ See Arizona Board of Regents Policy 5-202, attached. As ASUA is a

¹ Pursuant to Board Policy 5-202.B, an "associated student body shall not be organized as a corporation nor become a legal entity separate from the University." Moreover, under Board Policy 5-202.A, the Board has veto power over any activity of the associated student body of each [University] and such power may be exercised on behalf of the Board by the administration of the institution consistent with state law and the Board's policies.



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department of the University, the activities and conduct of ASUA are those of the University itself and the allegations of the Complaint are, therefore, directed against the University.

The Complaint essentially alleges that the University violated the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq. (the "Act") by making an unlawful "contribution" to the campaigns of Senatorial candidates John McCain and Stuart Starky during their runs for the U.S. Senate in October 2004. Senator McCain and Senatorial candidate Stuart Starky appeared at a candidates' debate hosted by ASUA on October 15, 2004 (the "Debate"). The Complaint alleges that the University engaged in an unlawful campaign contribution in connection with a federal election because it footed the staging costs of the Debate, while refusing to permit a third Senatorial candidate, Ernest Hancock, to participate.

The University did not engage in any contribution prohibited by the Act. Section 441b(a) of the Act prohibits a "corporation" from making a "contribution" in connection with any federal election. As an initial observation, the University should fall outside of the definition of "corporation" under section 441b, because it is an instrumentality of the State of Arizona and an integral part of a governmental agency. However, even if the University were deemed a "corporation" for purposes of the Act, its staging of the Debate was neither inconsistent with the Act nor violative of the Federal Election Commission's ("FEC") regulations.

As an exception to Section 441b, the FEC regulations permit tax exempt educational and charitable organizations to stage candidate debates provided that they do not endorse, support, or oppose political candidates or political parties. See 11 C.F.R. § 110.13. As an instrumentality of the State of Arizona, the University does not endorse, support, or oppose political candidates or political parties.

Under the FEC regulations, the structure of a candidate debate is left up to the discretion of the staging organization, provided that certain requirements are met:

1. The staging organization may use its own funds, or funds donated by corporations or labor organizations, to defray staging costs. 11 C.F.R. §§ 110.13(b) and 114.4(f).
2. There must be at least two candidates. 11 C.F.R. § 110.13(b)(1).
3. The debate must not be structured to promote or advance one candidate over the other. 11 C.F.R. § 110.13(b)(2).
4. For all debates, the staging organization must use pre-established objective criteria to determine which candidates may participate, and for general elections the candidate's particular political party cannot be used as the sole objective criteria. 11 C.F.R. § 110.13(b)(c).

The University met each of the requirements stated above when it staged the debate between Senator John McCain and Stuart Starky. First, the University used its own funds to stage the Debate. Second, the University invited at least two candidates, McCain and Starky, who each participated in the Debate. Third, the University did not promote or advance either one of these two candidates over the other. Finally, the

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University did not use a candidate's political party as its sole objective criteria for determining which of them should participate.

ASUA has a nearly one hundred-year history of providing students with leadership and educational programs at the University. In March 2004, ASUA decided that its programs for the 2004 Spring and Fall semesters would be united under one theme, coined, "Civic Engagement." The objectives identified as central to that theme were Voter Registration, Education, and Voting. ASUA's goals included generating as much student interest in its Civic Engagement program as possible. The Education component of the Civic Engagement series involved speeches by various political speakers and one debate on campus, which is the Debate at issue in this matter.

In deciding whether to stage the Debate, the University determined that a debate between McCain and Starky would create the most student interest and attract the greatest number of students to attend the occasion. The selection process did not involve any consideration of the candidates' viewpoints. The most important consideration was that McCain and Starky both had significant student and voter interest and support, as well as a high level of campaign activity. Conversely, Senatorial candidate Ernest Hancock had little student and voter interest, and low campaign activity in comparison.

The November 2004 election results for the U.S. Senate race in Arizona demonstrate the levels of voter support for each of these candidates: John McCain won the election with 76.7% of the popular vote, Stuart Starky came in second with 20.6% and Ernest Hancock finished third, with 2.6%. See Arizona Secretary of State 2004 General Election Results, attached. McCain and Starky were the significant candidates in this election, and that is why they were chosen to participate in the Debate.

In conclusion, the University falls outside of the definition of "corporation" under the Act because it is an instrumentality of the State of Arizona. However, if the University is treated as a "corporation" for purposes of the Act, its activities did not constitute an unlawful contribution. For these reasons, the University requests that the Commission take no action with respect to the Complaint. Please feel free to contact me if you need any additional information:

Respectfully submitted,



Peter Likins
President

Internal Revenue Service

District
Director

The University of Arizona
Controller's office
Babcock Building Room 4104
Tucson, Arizona 85721

Department of the Treasury

P.O. Box 2350 Los Angeles, Calif. 90053

Person to Contact:
Terry K Izumi

Telephone Number:
213-894-4170

Refer Reply to:

EOG-4/TI
Date:

March 31, 1989

Gentlemen:

This is in response to your inquiry dated February 21, 1989, regarding determination letter for the University of Arizona.

Our records indicate that you were formed by the State of Arizona. Section 115 of the Internal Revenue Code provides for the exclusion of income for instrumentalities of a state or municipal government.

Because you are an integral part of the government agency, an exemption letter is not necessary.

Also, it should be noted that contribution made to political subdivisions, such as school districts, are deductible by the donors for Federal income tax purposes if made exclusively for public purposes as provided by section 170(c) (1) of the Internal Revenue Code.

Sincerely yours



District Director

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Policy Number: 5-202	Policy Name: Associated Students
Policy Revision Dates: 12/85	Page 1

5-202 Associated Students

- A. The constitutions of the student bodies of the institutions shall not be submitted to the Board for approval, but the Board may, at the request of the president of an institution, direct the president of the institution to appoint a committee to review the constitution and determine whether revisions are necessary or desirable. The results of the review may be submitted to the Board, if the president and committee so decide, for such action as the Board may deem appropriate.
- B. Associated student bodies of the institutions shall not devote their funds to outside business activities. An associated student body shall not be organized as a corporation nor become a legal entity separate from the university.
- C. The Board has veto power over any activity of the associated student body of each institution and such power may be exercised on behalf of the Board by the administration of the institution consistent with state law and Regents' policies.

2004 General Election (Unofficial Results)
Produced by the Arizona Secretary of State's Office

**U.S. Senator
General**

County	HANCOCK LBT	MCCAIN REP	STARKY DEM	Totals	Polls	Polls Reporting	Percent of Polls
Apache	905	12,923	9,588	23,416	45	45	100.0%
Cochise	1,394	32,879	9,555	43,828	64	64	100.0%
Coconino	1,504	35,849	13,520	50,873	83	83	100.0%
Gila	632	15,551	4,291	20,474	40	40	100.0%
Graham	322	8,171	2,000	10,493	18	18	100.0%
Greenlee	68	2,166	746	2,980	8	8	100.0%
La Paz	156	3,826	965	4,947	12	12	100.0%
Maricopa	29,769	917,527	216,124	1,163,420	1,058	1,058	100.0%
Mohave	1,686	44,402	10,423	56,511	73	73	100.0%
Navajo	1,222	23,091	7,434	31,747	70	70	100.0%
Pima	7,980	258,010	89,483	355,473	401	401	100.0%
Pinal	1,692	48,094	13,595	63,381	67	67	100.0%
Santa Cruz	252	7,502	3,583	11,337	24	24	100.0%
Yavapai	3,160	67,312	14,852	85,324	104	104	100.0%
Yuma	1,056	28,069	8,348	37,473	42	42	100.0%
Totals	51,798	1,505,372	404,507	1,961,677	2,109	2,109	100.0%
Percentages	2.6%	76.7%	20.6%				

Last Updated on Tuesday, November 16, 2004 at 4 57.13 PM

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